

Montana Code Annotated 2015

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85-2-309. Hearings on objections -- jurisdiction. (1) If the department determines that an objection to an application for a permit under [85-2-311](#) or change in appropriation right under [85-2-402](#) states a valid objection, it shall hold a contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 90 days from the date set by the department for the filing of objections after serving notice of the hearing by first-class mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department may extend the 90-day deadline for good cause shown or upon request of the applicant and all objectors. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to [85-2-316](#) or [85-2-322](#).

History: En. Sec. 19, Ch. 452, L. 1973; R.C.M. 1947, 89-883; amd. Sec. 6, Ch. 596, L. 1985; amd. Sec. 6, Ch. 497, L. 1997; amd. Sec. 3, Ch. 422, L. 1999; amd. Sec. 4, Ch. 251, L. 2009.

Provided by Montana Legislative Services

WATER POLICY INTERIM
COMMITTEE 2015-16

May 3, 2016

Exhibit 11

APPLICATION FOR CHANGE OF WATER RIGHT HISTORICAL WATER USE ADDENDUM

This addendum may be completed and the information attached to a change application. This addendum is for changes to irrigation uses only.

Attach additional sheets if necessary. Attachments must be labeled as shown in the sections below (i.e. HUA.1.a). If a section is not applicable, label the section as Not Applicable or NA and explain why it is not applicable.

If you would like the Department to consider a consumptive volume other than the amount that would be determined through the use of ARM 36.12.1902(14), you must complete this form. Additional information may also be included to justify your historical diverted volume. Include as much detail as possible for each water right. The answers to these questions will allow the Department to analyze the extent of the historical consumptive use and whether the historical use will be adequate to meet the needs of your proposed use.

Water Right No. _____

Applicant Name _____

Complete a separate form for
each water right being changed.

Section 1. Water Right Information

- HUA.1.a Yes ☐ No ☐ Is your priority date senior enough in relation to other water rights on the stream or conveyance system (ditch, canal, etc.), to allow irrigation throughout the entire growing season? The growing season is typically April through October.
- HUA.1.b Yes ☐ No ☐ Have you ever received a "call" on your water right by senior water users requesting you to cease diverting water? If yes, when? _____
- HUA.1.c Yes ☐ No ☐ Are your diversions limited by a water commissioner or calls from senior users during portions of the irrigation season?
- HUA.1.d Yes ☐ No ☐ Do you irrigate every year? If not, please explain.

- HUA.1.e What is the typical month & day you begin diverting water? _____
- HUA.1.f What is the earliest month & day water has been diverted? _____
- HUA.1.g What is the latest month & day water has been diverted? _____
- HUA.1.h Do you rotate water use with other irrigators within your ditch/canal or stream? If yes, please explain the rotation system.

Section 2. Source Information

- HUA.2.a Yes ☐ No ☐ Is your water source perennial at your point of diversion? If not, how long during the irrigation season does your source typically flow? _____

HUA.2.b Yes ☐ No ☐ Does your source of water flow in sufficient quantity to meet your diversion, conveyance and crop needs throughout the growing season or the period of appropriation of your water right? If not, please explain.

Section 3. Historic Diverted Volume

*If no evidence is provided, or if the evidence provided is insufficient or inadequate for the purpose of determining historical diverted volume, then the Department's Historic Diverted Volume Methodology will be used. If providing information for this section, provide information for section a **or** b below.*

HUA.3.a.1 Yes ☐ No ☐ Do you have direct evidence (historical records) of historical conveyance and on-farm efficiencies? If yes, please attach information and answer question 2. If no, proceed to HUA.3.b.1.

HUA.3.a.2 Yes ☐ No ☐ Do you have evidence to support the flow rate, volume, and period that water was historically diverted such as historical records, infrastructure dimensions, carriage requirements, scheduling constraints, etc.? If yes, please attach. If no, proceed to HUA.3.b.1.

- OR -

If you answered **no** to the questions above, attach the information requested below:

HUA.3.b.1 Provide evidence that the dimensions of your present conveyance system resemble historical dimensions (method of delivery, number and length of ditches/pipe, capacities)?

HUA.3.b.2 Provide estimates and supporting documentation of present conveyance losses.

HUA.3.b.3 Provide evidence that your on-farm application method resembles historical conditions.

HUA.3.b.4 Provide estimates and supporting documentation of present application losses.

HUA.3.b.5 Provide evidence to support the flow rate, volume, and period that water was historically diverted (infrastructure dimensions, carriage requirements, scheduling constraints, etc.)

Section 4. Historic Consumptive Use

If no evidence is provided, or if the evidence provided is insufficient or inadequate for the purpose of determining consumptive use, then the Department's Historic Consumptive Use Methodology will be used.

HUA.4.a Yes ☐ No ☐ Can you provide additional information specific to the place of use which will assist the Department in determining the historical consumptive use? Specifically, can you provide documentation pertaining to historical irrigation practices such as growth dates or net irrigation application that may differ from the Department's standard implementation of the historical use rules (ARM 36.12.1902)? If yes, please provide narrative and any supporting documentation you have to substantiate (or validate) this information (production records, aerial photographs, temperature records, etc).
